

1. Have you heard about the new pregnancy leave provisions in Ontario?

Pregnancy leave legislation has been in effect in Ontario since 1970 to ensure a minimum standard of job security for the pregnant employee. In January, 1975, the provisions of the Employment Standards Act were amended to provide for a more flexible pregnancy leave with broader coverage.

2. What is the new law?

The Act prohibits dismissal because of pregnancy and provides for a flexible, 17-week, unpaid pregnancy leave of absence for all employees with one year and 11 weeks service with an employer prior to expected date of delivery. The Act now requires that an employee give two weeks' notice of the date she intends to begin her leave.

3. Does this law apply to all employers?

All employers in Ontario, small or large, are now bound by this law, except companies or agencies under the jurisdiction of the federal government. These include banks, transportation and communication industries such as radio, television, railway, airline and specific national industries of inter-provincial concern whose employees are guaranteed pregnancy leave under the federal Canada Labour Code.

4. Who is eligible to apply for pregnancy leave?

Any woman, married or unmarried, who has been continuously employed by a company for at least 12 months and 11 weeks before the estimated date of delivery is eligible to apply for pregnancy leave.

5. Is temporary absence considered a break in employment?

When determining eligibility for pregnancy leave, absence from work for normal vacation, sick leave or other authorized leaves of absence, or temporary lay-off is not considered a break in employment.

6. Are part-time employees covered?

Yes. Regular part-time employees are covered by the law. This includes any employee who works at regular intervals (not necessarily the same hours) during part of a week or month. Provided that the arrangement has been established for at least one year, the employee is entitled to the same provisions of pregnancy leave as the full-time employee.

7. When and how should the pre-natal leave commence?

The employee is entitled to begin her leave of absence at any time within 11 weeks before the expected date of birth. She must, however, give her employer 2 weeks' notice in writing of the date she intends to begin her leave and a medical certificate indicating the expected date of the birth.

Although the law specifies up to 11 weeks pre-natal leave, it is also quite permissible to begin the leave earlier, by mutual agreement with the employer, or by terms of a collective agreement.

8. Can the employee be required to begin her leave sooner than she intends?

Providing that she is able to perform her work satisfactorily, the law ensures that no pregnant employee may be compelled—either by her employer or by a collective agreement—to begin her leave sooner than she intends. However, the employer may initiate the leave earlier than the employee intends if the employer can show that the employee cannot manage her normal workload adequately.

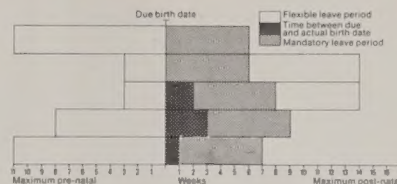
Whatever length of pre-natal leave the employee plans to take, both she and her employer benefit from explicit plans made before commencement of the leave, to avoid confusion and misunderstanding at a later date.

9. Must the employee always give 2 weeks' notice before starting her leave?

Not always. If an employee who is entitled to pregnancy leave but has not yet applied for it, is unable for medical reasons to continue working, she does not have to give the 2 weeks' notice normally required. Within 2 weeks after she stops work, however, she must provide her employer with a medical certificate stating the expected or actual date of the birth and that she was not able to continue working due to a medical condition arising from her pregnancy.

10. When should the employee return to work after post-natal leave?

The employee is entitled to a fixed minimum post-natal leave of 6 weeks after the actual date of the birth or ending after no more than 17 weeks from the beginning of the leave, whichever is the later. The following chart gives examples of the flexibility of pre- and post-natal leave normally allowed under the law, according to the time that the leave commences.



11. May the employee return to work after her post-natal leave sooner than she originally intended?

If a woman wishes to return to work less than 6 weeks after the birth, she must provide her employer with a medical certificate stating that she is fit to resume work and 1 week's notice of her intention to return. After the 6-week post-natal leave period, an employee may take a shorter leave than originally arranged with her employer only by mutual agreement.

12. Must the employee return by the end of the 17-week period, or can she take a longer leave?

Only if she returns by the end of the 17-week period, or 6 weeks after the birth—whichever is the later—is the employee guaranteed the right to her former position or a comparable position, with no loss of seniority or benefits.

Longer post-natal leaves may be arranged by mutual agreement with the employer, or negotiated through collective agreements, but in such cases, the type of job to which the employee will return is then beyond the jurisdiction of the legislation and is also open to negotiation.

Therefore, if a longer leave is planned, it is advisable for both parties to set out explicitly the terms and conditions of the employee's return to work.

13. Does the employee have the right to the same job after pregnancy leave?

Normally, the employee will be reinstated to the same position or in work comparable to that which she held prior to her leave, at the same salary, and with no loss of benefits or seniority accrued to the start of the leave.

However, in the case of a temporary lay-off in the organization during the time of her leave, she should be reinstated after her leave and when operations are resumed, in accordance with the seniority she held at the start of her leave.

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In the same way, if, while the employee was on pregnancy leave, the employer discontinued the type of work performed by the employee prior to her leave, she should be reinstated in alternate work of a comparable nature, in accordance with the seniority she held at the start of her leave.

14. What about employee benefits during pregnancy leave?

While Ontario law requires that any benefits or seniority accumulated to the date of leave-taking be retained, it does not provide for accumulation of further benefits during pregnancy leave. Arrangements for regular payment of benefit premiums, such as pension, health insurance, unemployment insurance, etc. should be worked out between employer and employee prior to the leave since the law does not require employers to continue their share of contributions during pregnancy leave.

15. What about the pregnant employee who plans to resign with the birth of her child?

If a woman knows of her right to pregnancy leave but has formally indicated that she will be terminating her employment, then she is not covered by the pregnancy leave legislation and may be treated as any resigning employee with due notice according to the provisions of the Employment Standards Act.

16. Can a pregnant woman be dismissed for reasons other than pregnancy?

Yes. Pregnancy does not protect the employee from dismissal for other valid reasons but pregnancy alone cannot be cause for dismissal.

Unemployment Insurance Benefits

1. Are unemployment insurance benefits available to the employee during pregnancy leave?

A woman who ceases work because of pregnancy, whether or not she intends to return to work, is normally eligible for a maximum of 15 weeks unemployment insurance benefits—8 weeks before the expected date of the birth, the week of delivery, and 6 weeks after.

2. Is the period when unemployment insurance benefits are available also flexible?

The period for which unemployment insurance benefits are available during pregnancy leave is not flexible. This can be an important consideration for the

woman planning to take a longer post-natal leave than the 6-week minimum—to remember that benefits are available for only 6 weeks after the birth.

3. How does the employee establish the right to benefits?

The employer must provide the employee with a document known as a "Record of Employment" which is necessary to establish the right to benefits. Once the employee has applied for benefits, there is a 2 week waiting period before her payments begin. Therefore, it is important for the woman to apply for benefits as soon as she begins her leave.

4. Are some employees not eligible for unemployment insurance benefits during pregnancy leave?

Eligibility for unemployment insurance benefits during pregnancy leave requires a "major attachment" to the work force, which means 20 weeks or more of insured employment during the last year. In addition, a woman must have had 10 weeks of insured employment between the 30th and 50th week before the expected date of the birth.

Amendments to the legislation on unemployment insurance benefits during pregnancy leave were introduced in October, 1974. For further details, contact your nearest branch of the Unemployment Insurance Commission.

Further Information

For further enquiries about pregnancy leave, contact the Employment Standards Branch, Ontario Ministry of Labour, 400 University Avenue, Toronto, Telephone No. 965-5251, or a regional office in Hamilton, Kenora, Kingston, Kitchener, London, Ottawa, Sault Ste. Marie, Sudbury, Thunder Bay or Windsor.

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Pregnancy Leave in Ontario

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